

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Henkel Corporation)	Shelby County
Personal Property ID: P-007822)	
)	
Tax Years 2011 and 2012)	Appeal Nos. 90941 and 90942

Initial Decision and Order

Statement of the Case

The Shelby County Board of Equalization ("local board") has valued the subject property for tax purposes as follows:

<u>Tax Year</u>	<u>Appraisal</u>	<u>Assessment</u>
2011	\$8,445,455	\$2,533,650
2012	\$7,436,460	\$2,230,950

On October 24, 2013, the State Board of Equalization ("State Board") received appeals of back assessment/reassessments for tax years 2011 and 2012 from the taxpayer in this matter, Henkel Corporation.

The undersigned administrative judge conducted a hearing of this matter on December 4, 2014, in Memphis.¹ At the hearing, Henkel was represented by registered agent Janet Mercer, a Sr. Tax Manager with DuCharme, McMillen & Associates, Inc. Also in attendance for the appellant was Jeff Henrie, Henkel's Plant Manager. The Shelby County Assessor of Property was represented by her legal advisor, John Zelinka. He was assisted by Eric Beaupre, CPA, who serves as the Assessor's audit manager.

¹ The record in this matter remained open until December 19, 2014, in order for the appellant to file post-hearing documents.

Findings of Fact and Conclusions of Law

The subject property of this appeal is typical equipment and machinery utilized in appellant's manufacturing operation of adhesive products.

In this State, all business and professional entities must report annually to the Assessor "all tangible personal property owned by the taxpayer and used or held for use in such business or profession including, but not limited to, furniture, fixtures, machinery and equipment, all raw materials, supplies, but excluding all finished goods in the hands of the manufacturer and the inventories of merchandise held for sale or exchange." Tenn. Code Ann. § 67-5-903(a).

The basis of valuation set out in Tenn. Code Ann. § 67-5-601(a) is that [t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

As the party seeking to change the current assessment of the subject property, the appellant has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

At the outset of the hearing the parties agreed that there were three outstanding issues to be resolved: whether or not certain assets were actually on site on the relevant assessment date, the grouping of certain piping utilized within the manufacturing process and whether certain assets should be classified as personal or real property. These issues are discussed separately below.

Location of Assets

At the hearing, Mr. Henrie testified that after the appellant acquired the property, they transitioned from a water based manufacturing process to a hot melt process. This necessitated

the use of different equipment and the appellant instigated the removal of the outdated equipment. The appellant presented copies of contracts and testimony from Mr. Henrie which indicated that the items in question were no longer on the property as of the relevant assessment date. Upon seeing the documents and hearing the testimony, the Assessor did not challenge this contention.

Piping

The appellant argued that the Assessor's position that certain piping assets be placed in Group 6 as pipeline equipment, as opposed to Group 5 as process equipment, was in error. Again, Mr. Henrie testified extensively on the actual use of the piping as it relates to the manufacturing process. Despite the Assessor's contention that the piping merely transported the product from one location to another, Mr. Henrie was persuasive in detailing how the piping, which plays a part in heating the resins to certain temperatures in order to convert it to a liquid state, is an integral part in the manufacturing of the finished product.

Real/Personal Property

Finally, the appellant argued that four items listed by the Assessor as personal property should in fact be classified as real property. These include an eye-wash stand, cabinets, exhaust fans and certain piping.

Tenn. Code Ann. §67-5-501 defines certain terms for purposes of classification and assessment. It says, in part:

(7) "Personal property" includes every species and character of property that is not classified as real property;

* * *

(9) (A) "Real property" includes lands, tenements, hereditaments, structures, improvements, movable property assessable under § 67-5-802, or machinery and equipment affixed to realty, except as otherwise

provided for in this section, and all rights thereto and interests therein, equitable as well as legal;

(B) Real property includes, but is not limited to, the following:

(iii) Mains, pipes, pipelines and tanks permitted or authorized to be built, laid or placed in, upon, or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, excluding propane tanks for residential use and above ground storage tanks that can be moved without disassembly and are not affixed to the land; and

* * *

(12) "Tangible personal property" includes personal property such as goods, chattels, and other articles of value that are capable of manual or physical possession, and certain machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself.

Further guidance is provided by the State Board Rule 0600-5-.09, which says in part:

(1) In determining whether property should be assessed as real or personal, the following factors should be considered:

(a) The apparent movability or permanency of the item in its location or attachment to the land or structure. The cost of moving the item and the amount of damage that will be incurred to the item, the land, or the improvement if the item is removed should be weighed against the value of the item of property that is being considered. If the value of the item exceeds the moving cost and the amount of damage incurred, it is more likely to be considered personal property.

(b) The primary purpose which the item serves. This factor would most generally concern an item that forms a part, or segment, of a series of functions in a manufacturing and/or processing system. If the item is more or less special purpose in nature and its practical use would not enhance the total property if the present or a similar manufacturing processing system were not there, it is more likely to be considered personal property.

The proof offered by the appellant relative to this issue is convincing. The items at issue appear to be typical items that would be left behind in a manufacturing facility should the present owner sale the property and move operations elsewhere. These items are not part of the manufacturing process, but would be found in virtually any manufacturing operation. Thus, it is appropriate to classify these items as real property.

For these reasons, the administrative judge must recommend adoption of the reduction advocated by the appellant.

Order

It is, therefore, ORDERED that the following values be adopted for tax years 2011 and 2011:

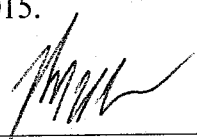
<u>Tax Year</u>	<u>Appraisal</u>	<u>Assessment</u>
2011	\$7,551,100	\$2,265,330
2012	\$6,624,500	\$1,987,350

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

Entered this 13th day of March 2015.



Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

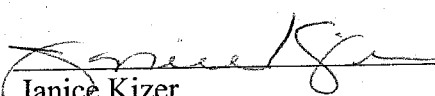
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Janet E. Mercer
DuCharme, McMillen & Associates
South Tower, Suite 100
10 Glenlake Parkway
Atlanta, Georgia 30328

Joshua Forbes
Shelby Co. Property Assessor's Office
1075 Mullins Station Road
Memphis, Tennessee 38134

This the 13th day of March 2015.



Janice Kizer
Department of State
Administrative Procedures Division